



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Numbers:
UI-2022-001612 & UI-2022-001613
(EA/03293/2021 & EA/03372/2021)**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 8 November 2022**

**Decision & Reasons Promulgated
On the 21 November 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MANPREET SINGH
DAVINDER KAUR**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih, instructed by Braitch Solicitors

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of India, and are husband and wife. They appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse to issue them with EEA family permits to enter the UK as the extended family members

of an EEA national under the Immigration (European Economic Area) Regulations 2016.

2. The appellants applied for EEA family permits on 11 September 2020 to join the first appellant's brother and his wife, a Polish national exercising treaty rights in the UK. The respondent refused the applications on 15 February 2021 as it was not accepted that the appellants were dependent upon the sponsor and it was therefore not accepted that they were extended family members in accordance with regulation 8(2) of the EEA Regulations. The respondent noted that the first appellant had previously been refused a visit visa on 21 February 2019, at which time he had stated that he had lived in his current home since birth and that he had been working as a self-employed dairy farmer/agriculturist since 2004 with a monthly income of £689. As such, the respondent was not satisfied that any money from the sponsor paid for his essential needs in India and considered that he had his own source of income from which he derived his day-to-day living costs.

3. The appellants appealed against that decision and their appeals came before First-tier Tribunal Judge Chohan on 30 November 2021. The judge heard from the sponsor, Aneta Agata Kowalczyk and her husband (the first appellant's brother). It was claimed before the judge that the first appellant and his brother jointly owned agricultural land in India and that the proceeds from the land were retained by the appellants who lived in the family home, rent-free. The judge noted the evidence of money sent to the appellants from the sponsor but did not consider that that alone established that the appellants were financially dependent upon the sponsor. The judge recorded the sponsor's evidence that the financial support had started in January 2020 and that prior to that the appellants had had a dairy farm which comprised of 12-13 buffalo but were claiming that the buffalo had died due to disease. He noted, however, that there was no documentary evidence to support that claim and further, that the appellants had provided no evidence of their circumstances in India. He found there to be no evidence to show that the money sent to the appellants was for their essential and basic needs and did not accept that there was a situation of real dependency. The judge accordingly found that the appellants did not meet the requirements of the EEA Regulations and he dismissed the appeals.

4. The appellants sought permission to appeal to the Upper Tribunal on the grounds that the judge had arguably ignored the unchallenged oral evidence of the sponsor and her husband as to what essential needs they were meeting by sending the remittances, and the evidence given by the appellants in their witness statements about their circumstances in India, or alternatively had failed to give reasons for rejecting that evidence.

5. Permission was refused in the First-tier Tribunal but was subsequently granted on a renewed application to the Upper Tribunal. The matter then came before me.

6. At the hearing Mr Williams conceded that there was an error of law in Judge Chohan's decision since the judge, in finding there to be no corroborating evidence and no evidence of the appellants' circumstances in India, had failed

to take into account the oral evidence of the sponsors and to explain why he did not give their evidence any weight, and had overlooked or failed to make any findings on, the breakdown of income and expenditure provided by the appellants. Mr Williams conceded that the error was such that the decision had to be set aside and remitted to the First-tier Tribunal to be heard afresh.

7. In the circumstances, given Mr Williams' concession, and the reasons he provided, I find that Judge Chohan's decision cannot stand and has to be set aside in its entirety. The appropriate course is for the matter to be remitted to the First-tier Tribunal to be heard *de novo* by another judge. Ms Masih advised me that the appellants had further evidence to produce to the Tribunal, as the sponsors had recently visited them in India. It was agreed that any further evidence upon which the appellants should seek to rely was to be provided to the First-tier Tribunal in a consolidated appeal bundle.

DECISION

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Chohan.

Signed: S Kebede
Upper Tribunal Judge Kebede
2022

Dated: 8 November